

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF ARKANSAS  
TEXARKANA DIVISION**

|  |          |
|--|----------|
| <b>GLORIA BRADFORD, Individually</b>           | <b>§</b> |
| <b>and as Class Representative on Behalf</b>   | <b>§</b> |
| <b>of All Similarly Situated Persons; NED</b>  | <b>§</b> |
| <b>BURNETT, JR., Individually and as</b>       | <b>§</b> |
| <b>Class Representative on Behalf of All</b>   | <b>§</b> |
| <b>Similarly Situated Persons; SAMUEL</b>      | <b>§</b> |
| <b>ALEXANDER, Individually and as</b>          | <b>§</b> |
| <b>Class Representative on Behalf of All</b>   | <b>§</b> |
| <b>Similarly Situated Persons; BOOKS,</b>      | <b>§</b> |
| <b>ETC., by and through GLORIA</b>             | <b>§</b> |
| <b>BRADFORD, Class Representative on</b>       | <b>§</b> |
| <b>Behalf of All Those Similarly Situated;</b> | <b>§</b> |
| <b>and STELLA PATRICIA SMITH,</b>              | <b>§</b> |
| <b>Individually and as Class</b>               | <b>§</b> |
| <b>Representative on Behalf of All</b>         | <b>§</b> |
| <b>Similarly Situated Persons,</b>             | <b>§</b> |

## Plaintiffs

**VS.**

**UNION PACIFIC RAILROAD,  
A Delaware Corporation,**

## Defendant

**CAUSE NO. 4:05-cv-4075**

**UNION PACIFIC RAILROAD COMPANY’S MOTION TO DISMISS**  
**PLAINTIFFS’ FOURTH AMENDED CLASS ACTION COMPLAINT**  
**PURSUANT TO FED. R. CIV. P. 12 (b)(6)**

COMES NOW Defendant Union Pacific Railroad Company (“Union Pacific Railroad” or “Union Pacific”) and files its Motion to Dismiss Plaintiffs’ Fourth Amended Class Action Complaint Pursuant to Fed. R. Civ. P. 12(b)(6) asking the Court to dismiss this action in its entirety on the ground that Plaintiffs’ claims are preempted by federal law, specifically, the

Federal Railroad Safety Act (“FRSA”), 49 U.S.C. § 20101, et seq., the Hazardous Material Transportation Act (“HMTA”), 49 U.S.C. § 5101, et seq., and regulations promulgated, respectively, thereunder. Because Plaintiffs’ claims are preempted in their entirety and because no private right of action exists, Plaintiffs’ Fourth Amended Class Action Complaint and any cause of action alleged should be dismissed with prejudice. In support of its motion, and filed contemporaneously herewith, Union Pacific incorporates by reference in its entirety Union Pacific Railroad Company’s Memorandum In Support of Motion To Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6).

WHEREFORE PREMISES CONSIDERED, Union Pacific Railroad Company prays this Court grant its Motion to Dismiss Plaintiffs’ Fourth Amended Class Action Complaint Pursuant to Fed. R. Civ. P. 12(b)(6); dismiss with prejudice Plaintiffs’ cause of action in its entirety; and award Union Pacific Railroad Company any additional relief to which it may prove itself entitled.

Respectfully submitted,

/s/ Sean F. Rommel

George L. McWilliams  
Arkansas Bar No. 68078  
Sean F. Rommel

Arkansas Bar No. 94158

Leisa B. Pearlman  
Arkansas Bar No. 92070

Jack T. Patterson II  
Arkansas Bar No. 95012

**PATTON, ROBERTS,  
McWILLIAMS & CAPSHAW, L.L.P.**

2900 St. Michael Drive, Suite 400

Post Office Box 6128

Texarkana, Texas 75505-6128

Telephone: (903) 334-7000  
Facsimile: (903) 334-7007

**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served upon all counsel of record in the above action who have agreed to service by electronic filing, and to the following counsel of record by regular United States mail, on this 9th day of June, 2006:

Barry G. Reed  
Zimmerman Reed, PLLP  
14646 N. Kierland Blvd., Suite 145  
Scottsdale, AZ 85254.

/s/ Sean F. Rommel  
Sean F. Rommel